

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARVELLE BROWN,

Plaintiff,

v.

MARILYN SCHWAB,

Defendant.

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OPINION AND ORDER

12-cv-571-wmc

The court is in receipt of defendant Marilyn Schwab's brief in response to an order requiring the defendant to describe the factual basis for removal in detail and provide supporting legal argument. (Dkt. #7.) Defendant contends that removal is proper under 28 U.S.C. § 1442(a)(1), because she is an officer of the United States as the "Administrative Officer for the NCCPAC which is part of the VA." (Def.'s Br. (dkt. #7) 3.) Defendant fails to cite any support for her reading of "officer" to include someone holding her position or one similar to it.

More importantly, courts construing this removal provision, including the United States Supreme Court, have limited its application to instances where the federal official defendant raises a colorable federal defense, for example immunity predicated on federal law. *See, e.g., Mesa v. California*, 489 U.S. 121, 133-37 (1989) (explaining the history of § 1442(a)(1) as an exception to the "well-pleaded complaint" rule and reiterating its longstanding holding that "the federal officer removal statute [] require[s] the averment of a federal defense"). As far as this court can discern, defendant claims no such defense.

The court will allow defendant one more chance to explain how this case falls

within the contours of 28 U.S.C. § 1442(a)(1). Failure to do so will result in remand of this matter to state court.

ORDER

IT IS ORDERED that defendant must file a supplemental brief on or before September 14, 2012.

Entered this 7th day of September, 2012.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge